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TIME WARNER  TELECOM

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June 3, 1999

EX PARTE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

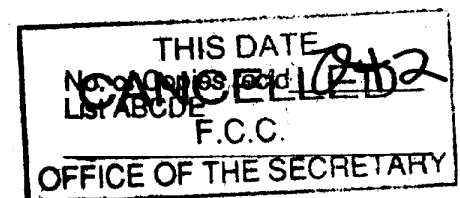
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Dkt. Nos. 95-116 and 99-35 /

Dear Ms. Salas:

As a follow-up to my *ex parte* visit last week with Janet Sievert and Chris Barnekov, I wanted to clarify certain points from that discussion. Mr. Barnekov raised the question as to the proper treatment of costs associated with LNP "default" queries that are made by ILECs prior to actual number porting within an NPA/NXX ("non-porting NPA/NXX"). The Time Warner Telecom position is that such costs cannot be recovered in charges for default queries performed on calls to an NPA/NXX after a number in the NPA/NXX is ported ("ported NPA/NXX"). A default query occurs when the N-1 carrier required to make the query does not do so. Based on the standard process established by the regional LNP industry working groups (in which incumbent LECs were active participants), N-1 carriers are not required to perform LNP queries on calls to an NPA/NXX until five business days following notification by the NPAC that a request for LNP has been made in the NPA/NXX. By not performing queries on calls prior to the NPAC notification, the N-1 carrier cannot, by definition, be in "default," since the carrier is merely following established industry guidelines. Therefore, it is inappropriate to associate these costs with the default query rate elements, as no default queries have been made. Moreover, N-1 carriers that need to purchase default query service on calls to a ported NPA/NXX should not be saddled with increased costs caused by the discretionary implementation procedures of incumbent LECs that differ from the established industry process.

Furthermore, as Time Warner Telecom has pointed out in our comments and *ex parte* letters in these proceedings, it is questionable as to whether it is necessary for ILECs to perform these premature queries at all. By performing all the necessary work at the end office level, but not at tandem offices until the NPAC notification of actual porting, the so-called "default" queries can be avoided altogether. The relevant ILECs have made no attempt to refute this point in their tariff



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filings or Direct Cases. The Commission should therefore conclude that the relevant ILECs have not met their burden of proof that these costs were economically and efficiently incurred, and the Commission should disallow their recovery.

Even if the Commission decides to allow the costs of queries performed on calls to non-ported NPA/NXXs to be recovered, those costs should be recovered through the end-user charge as any other general network upgrade costs directly related to providing LNP. In this way, the ILECs will not be able to transform the implementation of LNP, which is designed to lower entry barriers, into an entry barrier itself.

Finally, we discussed the fact that Sprint has been billing Time Warner Telecom for default queries in Orlando, Florida since December 1998. A review of these invoices shows that bills have averaged about \$30,000 per month for a total of \$122,000 through March 1999.

In accordance with Section 1.1206(b)(1) of the Commission's rules, four copies of this letter (two per docket) are being filed with the Commission Secretary for inclusion in the above-referenced dockets. Please do not hesitate to call if you have any questions or wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Shepherd". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Don Shepherd

cc: Janet Sievert
Chris Barnekov